

**Recommendation for Council Action Backup
Floodplain Variance Request – 2918 East Martin Luther King Boulevard**

SUMMARY OF FINDINGS:

1. THE PROPOSED DEVELOPMENT ENCROACHES ON THE 25-YEAR AND 100-YEAR FLOODPLAINS OF BOGGY CREEK.
2. THE DEVELOPMENT WILL NOT CAUSE ADVERSE FLOODING ON OTHER PROPERTY.
3. SAFE ACCESS EXISTS. Normal access to the building by pedestrians will be by direct connection to an area that is a minimum of one (1) foot above the design flood elevation. The development will include an exit on the south end of the building that will exit to E. Martin Luther King Jr. Boulevard to comply with the safe access requirement.
4. PROPOSED FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION. The proposed building meets the minimum elevation requirements of one-foot above the 100-year floodplain elevation.
5. A HARDSHIP CONDITION FOR THE PROPERTY DOES NOT EXIST. A large portion of the property is not in the floodplain, but the development is encroaching due to the size and location of the childcare services building.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. LDC 25-7-92 (A) and (B) Encroachment on Floodplain Prohibited prohibits encroachment of a building or parking on the 25-year and 100-year floodplains.

VARIANCE REQUESTED: *The applicant requests a variance to allow placement of a building and parking area within the 25-year and 100-year floodplains of Boggy Creek.*

- II. LDC Section 25-7-152 Dedication of Easements and Rights-of-Way requires that the owner of real property proposed to be developed dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and stormwater flow to the limits of the 100-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance to exclude the footprint of the proposed building from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- III. LDC Section 25-12-3, (Local Amendments to the Building Code), Section G103.5 Floodway Encroachment requires that prior to issuing a permit for any floodway encroachment, including fill, new construction, substantial improvements and other development or land-disturbing activity, the building official shall require submission of a certification by a Professional Engineer licensed by the State of Texas, along with supporting technical data in accordance with the City of Austin Drainage Criteria Manual, that demonstrates that such development will not cause any increase of the level of the design flood.

VARIANCE REQUESTED: *The applicant requests a variance to eliminate the certification requirement entirely. The applicant is proposing to develop in the floodway with an increase of*

the level of the design flood on their property. All design flood elevation increases are on the M Station property and do not adversely impact other properties.

- IV. LDC Section 25-12-3, (Local Amendments to the Building Code), Section G103.5.1 Floodway Revisions requires a floodway encroachment that increases the level of the design flood may be considered for a variance only if the applicant has applied for a conditional Flood Insurance Rate Map (FIRM) revision and has received the approval of the Federal Emergency Management Agency (FEMA)

VARIANCE REQUESTED: *The applicant requests a variance to eliminate the requirement of submitting the conditional FIRM to FEMA entirely. The applicant is proposing to increase the design flood elevation without submitting a map change to FEMA. All elevation increases of the design flood are on the M Station property and do not adversely impact other properties.*

- V. LDC Section 25-12-3, (Local Amendments to the Building Code), Section G105.5 Restrictions Requires The City Council not issue a variance for any proposed development in a floodway if any increase in flood levels would result during the design flood discharge.

VARIANCE REQUESTED: *The applicant requests a variance such that City Council may consider the variance request despite the increase in the design flood level caused by the proposed development. The applicant is proposing to develop the building with associated improvements that cause an increase in the flood level only on their property. The elevation increase of the design flood does not adversely impact other properties.*

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

Per LDC Section 25-12-3, Technical Codes, Section G105.7 Variances, variances shall only be issued upon an affirmative finding of the five conditions described below:

PREREQUISITE

1) A technical showing of good and sufficient cause based on the unique characteristics of the size, configuration or topography of the site.

Insufficient causes for issuing a variance may include the following:

- *Less than a drastic depreciation of property.*
- *Convenience of property owner.*
- *Circumstances of owner not land.*
- *To obtain better financial return.*
- *Property similar to others in neighborhood.*
- *Hardship created by owner's own actions.*

2) A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable;

FINDING

1) **CONDITION NOT MET.** The applicant has not demonstrated a good and sufficient cause that justifies the proposed development at this location of the site. The design of the site plan could be revised to locate the childcare services building on the other side of the creek where it would not encroach on the floodplain.

2) **CONDITION NOT MET.** Failure to grant the proposed variance will not render the lot undevelopable. The lot currently has an approved

The location of the floodplain on the property is a characteristic of the land. Hardship refers to the effect of the floodplain status of the land on its use; it does not refer to personal or financial circumstances of the current owner of the land. In fact financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships. The applicant has the burden of proving exceptional hardship. FEMA advises that the reasons for granting floodplain management variances must be substantial and the proof compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.

site plan for a multi-family residential development.

3) A determination that granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing laws or conflict with existing laws or ordinances.

3) **CONDITION IS MET.** This development will not cause flooding to other properties.

4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

4) **CONDITION IS NOT MET.** Denying this variance will not render the property valueless or create a loss of all productive use of the property. The childcare center could be located on the portion of the property that is not in the floodplain.

Relief is defined as respite from unnecessary hardship. Unnecessary hardship is defined as:

- *Loss of all beneficial or productive use.*
- *Deprivation of reasonable return on property.*
- *Deprivation of all or any reasonable use.*
- *Rendering property valueless.*
- *Inability to develop property in compliance with the regulations.*
- *Reasonable use cannot be made consistent with the regulation.*

5) Notification to the applicant in writing over the signature of the building official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

5) **CONDITION IS MET.** The applicant has been informed of the hazards of living in the floodplain and the floodplain and potential increased flood insurance premiums. The finished floor elevation of the proposed building is one foot above the 100-year floodplain.